

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 505 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANSINGHBHAI NAROTTAMBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 505 of 2003
MR R VENKATARAMANI, SR. COUNSEL with MR JOY MATHEW
for Petitioner No. 1-12
MR AMIT KOTAK, AGP for Respondent No. 1, 3 and 4
MR KM PATEL for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/05/2003

CAV JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. At the stage of admission hearing we have been informed by learned counsels appearing for the parties that the pleadings in this petition are complete and looking to the controversies that are involved in it, the petition is required to be finally decided. Hence, Rule. Mr. Amit Kotak, the Ld. AGP appearing for respondent no. 1 - State and Mr. K.M. Patel, the learned counsel appearing for respondent no. 2 - Gujarat Mineral Development Corporation (GMDC) waive service of the rule. The petition is heard fully and now it is being disposed of by this CAV judgment.

2. This petition is filed for claiming reliefs to declare that the acquisition of the petitioners' lands without prescribing for an adequate scheme for rehabilitation and resettlement is arbitrary, unreasonable and violative of Article 14, 19 (1) (d), (e) and 21 read with Articles 39, 39(b), 39A and 46 of the Constitution of India; and to direct the respondents by issuing appropriate writ, order or direction to take adequate measures to provide the petitioners appropriate site for resettlement and means to rehabilitate them; further that notifications issued u/S. 4 dated 20/11/2000 and u/S. 6 dated 7/1/2002 and notice issued u/S. 9(3) and (4) dated 10/4/2002 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the L.A. Act') be quashed and set aside, and other reliefs which are ancillary to these main reliefs including refixation of market price of the lands in question.

3. To determine the controversies arising in this petition, which is filed under Article 226 of the Constitution of India, certain facts are required to be stated and they are as under :-

3.1. According to the petitioners, they belong to Scheduled Tribes and are residents of village Amod in Jhagadia Taluka, District Bharuch. According to them, the population of this village consists of members of Scheduled Tribes like the petitioners. They do not have any particular means to maintain themselves. Some of them cultivate the lands or some of them do labour work in the fields and others do miscellaneous type of work. Village Amod has a Gram Panchayat comprising villages Amod, Maljipura and Bhuri.

3.2. It is further averred that lands of the petitioners and other residents of village Amod were sought to be acquired for mining purposes which may be carried out by respondent no. 2 for excavating lignite. The petitioners' grievance is that the acquisition is made without following the provisions of law and without taking any measures to resettle and rehabilitate the persons whose lands are sought to be acquired. Their further grievance is that even adequate market price of the land in question is not being offered to them towards compensation. In view of this, they have sought for the aforesaid reliefs.

3.3. It appears from the record of the petition that the land in question is already acquired for respondent no. 2. Respondent no. 2 is Government of Gujarat Undertaking which is incorporated under the provisions of the Companies Act, 1956. The share holding in respondent no. 2 of the Government of Gujarat is 100%. The main object for which it is incorporated is to carry out the projects of mining work of mineral. It is also engaged in other manufacturing activities. The major work which is normally undertaken by the respondent no. 2 is procuring lignite for the purpose of selling it to the industries. We are informed that lignite is catering to the needs of the industries as substitute to industrial coal. One such lignite project is in Rajpardi in Jhagadia Taluka, Bharuch District.

3.4. For this purpose the lands of village Amod were required to be acquired and hence the State Government through Special Land Acquisition Officer initiated proceedings under the L.A. Act and issued notification u/S. 4 of the L.A. Act dated 20th November, 2000. Subsequently on 7th January, 2002 notification u/S. 6 of the L.A. Act was issued and thereafter on 10th April, 2002 notices u/S. 9(3) and (4) of the L.A. Act were issued individually to the land owners. The award u/S. 11 of the L.A. Act is made in February 2003 and this petition has been filed some time prior to it i.e. on 23rd January, 2003. It also appears from the record that many of the land owners have accepted the award and received compensation, details of which will be referred to at appropriate place. The petitioners, however, have declined to do so and they have approached this Court.

4. We have heard Mr. R. Venkataramani, learned senior counsel appearing with Mr. Joy Methew for the petitioners, Mr. Amit Kotak, Ld. AGP for respondent no. 1 and Mr. K.M. Patel, learned counsel for respondent

no. 2.

4.1. According to Mr. Venkataramani, the present lands are of the ownership of members of the scheduled tribes and, therefore, voters of the Gram Sabha of Amod Group Gram Panchayat were required to be consulted in view of the provisions of section 4 of the Panchayat (Extension to the Scheduled Areas) Act, 1996 (hereinafter referred to as 'the Extension Act'). He has further submitted that the Extension Act has been enacted by the Parliament by virtue of the powers conferred on it vide Article 243M clause (b) as it empowers the Parliament to enact law, making provisions of Chapter IX of the Constitution applicable to the scheduled area. He has drawn our attention to clause (i) of section 4 of the Extension Act, which envisages that the Gram Sabha or the Panchayat at the appropriate level shall be consulted before making the acquisition of land in scheduled area and has submitted that the consultation required under that clause before initiating the acquisition proceedings in the present case is not made. He has further submitted that in view of the provisions of section 4 of the Extension Act, the State Government has brought about amendment in the Panchayat Act by enacting the Gujarat Panchayats (Amendment) Act, 1998. He has drawn our attention to section 13 of the Amendment Act whereby section 132-A is sought to be introduced in the Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act'). Section 132 A of the Act states that Taluka Panchayat be consulted before acquisition of land and rehabilitation of persons affected. According to him, since section 132-A of the Act does not provide for consultation with Gram Sabha, it is not in full compliance with the requirement of clause (i) of section 4 and there is a deficiency in the said provision. According to him, any acquisition of land in scheduled area at the village level made without prior consultation of the Gram Sabha is against the object of provisions of section 4 of the Extension Act and such acquisition cannot stand.

The second limb of his contention is that the consultation which is envisaged in clause (i) of section 4 of the Extension Act and section 132-A of the Act has to be fruitful, meaningful and after complete exchange of views and anything falling short of it cannot be considered to be a consultation in the eye of law. In support of this contention, he has placed reliance on several decisions, reference to which will be made in the course of this judgment.

His third submission is that the lands are situated in the scheduled area and they belong to the

members of scheduled tribe and, therefore, they cannot be alienated or transferred to any person including a Government Corporation. In support of this contention, he has placed heavy reliance on the decision rendered by the Apex Court in the case of Samatha v/s. State of Andhra Pradesh reported in AIR 1997 S.C. p. 3297.

Lastly he has submitted that the provisions of Extension Act require that the persons affected by the acquisition are to be resettled and rehabilitated. However, in the present case no measures in that direction have been taken and, therefore, the respondents have failed to comply with the mandatory provisions of the Act which may vitiate the acquisition proceedings.

4.2. So far the respondent no. 1 is concerned, no submissions have been made by the Ld. AGP except drawing our attention to the two short affidavits that have been filed on behalf of it.

4.3. Mr. K.M. Patel, learned counsel appearing for the respondent no. 2 - GMDC, however, has vehemently contested this petition. He has submitted that in view of provisions of section 132-A i.e. the amended provision of the Act, consultation with Gram Sabha is not at all required. According to him, the law requires that the acquiring authority should have consultation with the Taluka Panchayat and in the instant case Jhagadia Taluka Panchayat has been consulted, which has granted its consent for acquisition. He has further submitted that the new provision of law enacted by the State Government, namely u/S. 132-A of the Act is purely in accordance with clause (i) of section 4 of the Extension Act which prescribes that Gram Sabha or Panchayat at the appropriate level be consulted before acquiring any lands situated in scheduled area. He has submitted that the said clause only requires that either Gram Sabha or Panchayat at appropriate level is required to be consulted and, therefore, the State Government was fully justified in providing consultation with Taluka Panchayat alone and there is no deficiency or shortfall in that provision. He has further contended that most of the land owners have accepted the award which is made u/S. 11 of the L.A. Act and they have also received the compensation. According to him, the petitioners have vested interest in the lands and, therefore, they have approached this Court for collateral purpose. He has also contended that so far the rehabilitation and resettlement is concerned, no such question arises in this case. The lands which are acquired are agricultural lands and most of the land owners have their houses in

the village Amod, from where they are not disturbed and for the agricultural lands they have been awarded compensation which is on much higher side, which also takes care of the deprivation of their livelihood. He has further contended that the ratio laid down by the Apex Court in Samatha's case (supra) will not be applicable to the present case as the provisions of law here are different and no such absolute prohibition is in the Gujarat enactment. He has further submitted that the petitioners have approached this Court at much belated stage. By now the award is already made. The respondents are in possession of major portion of the lands, but they are not able to begin the mining operations because of the hindrance created by the unavailability of the petitioners' lands. He has further submitted that because of the delay the Corporation is incurring heavy expenditure without any fruitful results and further that the lignite which was available in other parts of this area has got almost exhausted requiring mining operations in the lands in question. The industries are also suffering from the shortage of lignite. He has further submitted that the present petition be dismissed.

5. To appreciate the rival contentions, we have carefully gone through the record of the petition and also the provisions of relevant law. We may first direct our attention to Chapter IX of the Constitution. This Chapter contains different provisions relating to the Panchayats. Article 243 defines certain expressions appearing in this Chapter. Clause (b) of Article 243 defines 'Gram Sabha'. It states -

"Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level"

Clause (d) defines 'Panchayat' as under :-

"panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas."

Article 243A provides that Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law provide. Article 243B provides for constitution of Panchayats. Sub-article (1) thereof prescribes that there shall be constituted in every State, Panchayats at the village, intermediate and district levels. Article 243C provides for powers, authority and responsibilities of panchayat. Article 243M states that this part of the Constitution

shall not apply to scheduled areas referred to in clause (1) and the tribal areas referred to in clause (2), of Article 244. However, clause (b) of sub-article (4) of Article 243M provides as under :-

"(4) Notwithstanding anything in this Constitution, -

(a) xxx xxx xxx

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of the Constitution for the purposes of article 368."

5.1. Thus the Parliament has been vested with the powers to enact law to make the provisions of Chapter IX of the Constitution applicable to the scheduled areas. Pursuant to these powers, the Parliament has enacted Extension Act which has come into force with effect from 24th December, 1996. Section 4 of the Extension Act, which is relevant for the purpose of decision of this petition, is reproduced as under :-

"4. Exceptions and modifications to Part IX of the Constitution :

Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely :

(a) a State Legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlets or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

(d) every Sabha shall be competent to

safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

(e) every Gram Sabha shall

(i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

(ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

(f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the Plans, programmes and projects referred to in clause (e)

(g) the reservation of seats in the communities in that Panchayat for whom reservation to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

(h) The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level

Provided that such nomination shall not exceed one tenth of the total members to be elected in that Panchayat;

(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before setting or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the state level;

(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted

to Panchayats at the appropriate level;

(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;

(l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with -

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub plans;

(n) the State legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level of the Gram Sabha;

(o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the

Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas."

The statement of objects and reasons of the Extension Act, which has been published in the Gazette of India, Extraordinary Part-II dated 11th December, 1996, shows that the said Act was being introduced in view of the persistent demands of the prominent leaders of the scheduled areas for extending the provisions of Part IX of the Constitution to these areas so that Panchayati Raj institution may be established there. It states as under:

"Accordingly, it is proposed to introduce a Bill to provide for the extension of the provisions of Part IX of the Constitution relating to Panchayats to the Scheduled Areas with certain modifications providing that, among other things, the State legislations that may be made shall be inconsonance with the customary law, social and religious practices and traditional management practices of community resources; every village shall have a Gram Sabha which shall be competent to safeguard and preserve the traditions and customs of the people and shall be vested with the powers to approve the programmes and projects for social and economic development as also identification of beneficiaries under such programmes; Panchayats at the appropriate levels shall be endowed with ownership of minor forest produce; recommendations of the Gram Sabha or the Panchayat at the appropriate level shall be made mandatory prior to grant of prospecting licenses or mining lease of minor minerals and shall be consulted before making acquisition of land in the Scheduled Areas for development projects or for resettlement of project affected members of the Scheduled Tribes; Panchayats at the appropriate level and the Gram Sabha shall have the power to prevent alienation of tribal lands and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe, have powers to regulate money lending to the members of the Scheduled Tribes, to manage village markets and to enforce prohibition or to regulate or restrict sale and consumption of any intoxicant; State legislations shall endow the Panchayats at the appropriate levels with specific powers and provide safeguards to prevent Panchayats at the higher level from assuming the powers and authority or Panchayats at the lower

level or the Gram Sabha ; the Offices of the Chairpersons in the Panchayats at all levels shall be reserved for the Scheduled Tribes ; the reservation of seats at every Panchayat for the Scheduled Tribes shall not be less than one-half of the total number of seats."

The statement of objects and reasons is self-explanatory, however, if it is perused vis-a-vis clause (i) of section 4 of the Extension Act, it appears that it was in contemplation of the legislature to provide for suitable provisions of law which may not only safeguard the lands situated in Scheduled Area but which may also ensure the settlement and rehabilitation of people of Scheduled Area in case they are likely to lose their land by or under any process of law. It, therefore, proposed to make two fold consultation with gram sabha or Panchayats at appropriate level compulsory i.e. before acquisition of land in Scheduled Area for the development project and before settling or rehabilitating the persons affected by such projects in Scheduled Area. Thus, even the acquisition of such lands under the provisions of the L.A. Act was proposed to be brought under the gaze of gram sabha or Panchayats at appropriate level so also the issue regarding settling or rehabilitating the persons likely to be deprived of their lands on account of such acquisition. The provision regarding the consultation has been duly incorporated in clause (i) of section 4.

As stated above, in view of clause (i) of section 4 of the Extension Act, the State Government has amended the Act by the Amendment Act of 1998 and has introduced section 132-A, which is as under :-

"132-A. Taluka panchayat to be consulted before acquisition of land and rehabilitation of persons affected.- Taluka panchayat shall be consulted,-

- (a) before acquiring under the Land Acquisition Act, 1894 (1 of 1894) any land situate in the taluka for any development project;
- (b) before resettling or rehabilitating persons affected by such project."

The question before us is whether the provisions of section 132-A are as per the requirement of clause (i) of sec. 4 of the Extension Act or it is wanting in some respects. In other words, the consultation as required under that section with the Taluka Panchayat alone is adequate and as per the mandate of clause (i) of section 4 or there is some deficiency in it i.e. to the extent it dispenses with consultation with gram sabha.

We may, therefore, again turn our attention to

the statement of objects and reasons to find out legislative intent in this behalf. Statement shows that proposal with regard to the consultation before acquisition and proposal to make recommendations of gram sabha or panchayats at appropriate level mandatory prior to grant of prospecting licenses or mining lease or minor minerals, have been clubbed together, most probably because these subjects pertain to land in Scheduled Area. In the Central enactment i.e. the Extension Act this object or proposal has been divided into two clauses of section 4 viz. (i) and (k). Over and above this, clause (l) of section 4 is also on the same line. It deals with grant of concession for exploitation of minor minerals by auction. All the three clauses make prior consultation/recommendation of gram sabha or panchayats at appropriate level mandatory.

5.2. Now language of clause (i) of section 4 of Extension Act clearly shows that the consultation is envisaged with either of the two entities and not both. The words used are "The gram sabha or the Panchayats at appropriate level". Had the legislative intent been that irrespective of consultation with Panchayats at any level, consultation with gram sabha at village level was mandatory before acquisition of land in Scheduled Area for development project and before settling and rehabilitating persons affected by it, the said clause would have been so worded and the legislature would have made its intention explicit by using words like "as the case may be" after the words "gram sabha or panchayats at appropriate level". No such language is to be found in that clause. On the contrary, it shows that the word used is 'or' and not 'and'. Needless to say that word 'or' is normally disjunctive and 'and' is normally conjunctive. Often it is said that the intention of the Legislature is to be gathered from the language used that means attention should be paid to what has been said as also to what has not been said. In the words of Scrutton L. J. "you do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'." (Green v/s. Glyurhowny Slate Co., (1928) 1 KB 561). We do not see any such obligations arising while interpreting the language of clause (i) of section 4.

5.3. Apart from this, we may now consult some other part of this very section whether Legislature intended to give word 'or' its plain and grammatical meaning in clause (i). Reference is already made to clauses (k) and (l) of section 4 which make prior

recommendation of gram sabha or Panchayats at appropriate level mandatory for grant of licence, lease or concession in respect of minor mineral. This activity i.e. activity pertaining to minor mineral has relation to lands situated in Scheduled Area. In these clauses also the disjunctive 'or' is used and not the conjunctive 'and'. As against that, in the very next clause i.e. clause (m) of section 4 which deals with endowing Panchayats with the powers and authority as may be necessary to enable them to function as institution of self government, the language used is "A State Legislature shall ensure that Panchayats at the appropriate level and the gram sabha are endowed specifically with-". The powers meant to be conferred upon them are enumerated in sub-clauses (i) to (vii). The difference of language used in these two sets of clauses of section 4 of the Extension Act clearly indicate that where the Central Act required State Legislature to cover both the entities viz. gram sabha and the Panchayats at appropriate level in a particular provision it has used 'and' and where it meant to give option for either the gram sabha or Panchayats at appropriate level, it has used 'or'.

5.4. Thus, in our opinion, when the State Legislature in section 132-A of the Act has provided for consultation with Taluka Panchayat alone, it has fully complied with mandate of the Central Act. In other words, section 132-A of the Act is completely in consonance with clause (i) of section 4 of the Extension Act and there is no deficiency in it.

5.5. Much stress has been laid by the counsel for the petitioners on the words "at appropriate level" occurring in clause (i) of section 4 of the Extension Act to contend that at the village level consultation with gram sabha before acquisition of land is absolutely necessary and consultation with Taluka Panchayat cannot fulfil the requirements of clause (i). This contention cannot be accepted. Words "at appropriate level" in these provisions are used in relation to the Panchayats alone and obviously for the reason that three tier system of Panchayats exists under the Act, viz. at the village level, at intermediate level and at the District level. This view can get adequate support from language used in statement of objects and reasons while proposing endowing Panchayats and gram sabha with certain powers and pursuant thereto language used in enacting clause (m) of section 4 and in particular the sentence "Panchayats at the appropriate level and the gram sabha shall have power.-" This leaves no room for doubt that these words are used qua Panchayats alone and they in no way give any

indication that consultation with gram sabha at the village level is mandatory.

5.6. This issue can also be examined from slightly different angle i.e. whether consultation with the Taluka Panchayat alone before acquisition of the lands for development project will prejudice the interest of people of Scheduled Area and whether it fails to achieve the object of clause (i) of section 4 of the Extension Act.

5.7. At this juncture, we may refer to certain provisions of the Act. Sub-section (33) of section 2 of the Act states 'the words 'Gram Sabha', 'panchayat area', 'population' and 'village' shall have the meaning respectively assigned to them in part - IX of the Constitution. Section 4 of the Act provides that there shall be a Gram Sabha for a village performing such functions as are provided by or under this Act. Section 93 provides for meeting of Gram Sabha. Sub-section (1) thereof reads as under :-

"93. Meetings of Gram Sabha.- (1) There shall be held at least two ordinary meetings of the Gram Sabha every year on such date, at such time and place, as may be prescribed but in no case the intervening period between two ordinary meetings shall be less than three months :

Provided that the Sarpanch may, at any time on his own motion, and shall, if required by the taluka panchayat or district panchayat call an extraordinary meeting of the gram sabha."

Section 94 provides Gram Panchayat to place before Gram Sabha statement of accounts and duties of Gram Sabha. Sub-section (1) of section 94 reads as under :-

"94. Panchayat to place before gram sabha statement of accounts, etc. and duties of gram sabha.- (1) The first meeting of the gram sabha in every year shall be held within two months from the commencement of that year, and the village panchayat shall place before such meeting

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) any other matter which the taluka panchayat and district panchayat requires to be placed before such meeting."

Clause (v) of sub-section (1) of section 94 provides for placement of any matter other than mentioned in clauses (i) to (iv) of that subsection, which the Taluka Panchayat and District Panchayat required to be placed before such meeting. The aforesaid provisions of the Panchayats Act show that at the instance of Taluka Panchayat extraordinary meeting of the Gram Sabha can be summoned and even in ordinary meeting at the instance of Taluka Panchayat, matter other than mentioned in clauses (i) to (iv) of sub-section (1) of section 94 can be considered. In such meetings the Taluka Panchayat can have meaningful discussion with gram sabha and obtain its sense in respect of proposed acquisition and keep the same in view during its consultation with the acquiring agency. Further by virtue of the Amendment Act, clause (ia) has been inserted in sub-section (5) of section 10 of the Act which reads as under :-

"(ia) In the case of a taluka panchayat, the whole local area of which comprises of any of the Scheduled Areas, the number of seats reserved for the Scheduled Tribes under sub-clause (i) shall be increased to such number as is not less than one-half of the total number of seats in the taluka panchayat."

Moreover, by amendment to the Act, section 11-A has been introduced which is as under :-

"11A. If for any reason an election does not result in the return of any member of Scheduled Tribes in a taluka panchayat or district panchayat, then the State Government may nominate from amongst members belonging to Scheduled Tribes who are qualified to be elected, such number of members as not to exceed one-tenth of the total members to be elected in that panchayat."

There is no provision like section 11A in respect of the village Panchayat.

In section 63 sub-section (2) original clause (a) stands substituted by new clause (a) which is as under :-

"(a) All offices of the President of the taluka panchayats in the State shall be reserved by the State Government for the Scheduled Tribes.
Explanation - For the purposes of this clause, "taluka Panchayat" means the taluka panchayat, the whole local area of which comprises of the

Scheduled Areas."

These provisions clearly indicate that at the intermediate level in Scheduled Area adequate representation is given to the members of the Scheduled Tribes in Taluka Panchayat and they can take ample care of interest of the members of Scheduled Tribes. When proper amendments have been made in the Act by the State Legislature in accordance with the mandate of the Extension Act, keeping in view the fact that interest of the people of Scheduled Area is paramount, it cannot be said that section 132-A of the Act does not fulfil the object of section 4(i). It may be borne in mind that Taluka Panchayat is a higher body than Gram Sabha and when different lands situated in such Talukas are required to be acquired, it is always better to consult one body, viz. Taluka Panchayat instead of different Gram Sabhas.

5.8. Lastly on this aspect attempt has been made by the petitioners by relying on clause (n) of section 4 of the Extension Act that powers and functions of Gram Sabha or village Panchayat should not be delegated at higher level and therefore, right of consultation which is vested in Gram Sabha should not be delegated to Taluka Panchayat. Simple reading of this clause will show that it refers to the powers and authority prescribed in clause (m) which are required to be conferred upon the Panchayats and gram sabha to enable them to work as local self government and no inference can be drawn that it takes into its sweep clause (i) also.

5.9. Though we have categorically held that there is no deficiency in section 132-A of the Act, even if it is assumed that there is such deficiency, it will not adversely affect or alter the position of the acquisition that has been made of the land of the petitioners in consonance with the existing law. It has been often observed by the Courts that their decision will not embarrass trade or commerce nor will it affect transactions which may have been adjusted, rights which may have been determined, titles which may have been obtained or personal status which may have been acquired with the change of law. In the present case, as stated above, the consultation as required under the provisions of section 132-A of the Act has been done with the Taluka Panchayat of Jhagadia and thereafter the land acquisition proceedings have been initiated and the lands have been acquired by the Government after fully complying with the provisions of the L.A. Act and hence the same will remain as it is and no change can be brought about

depriving respondent no. 2 of right of possession of these lands for the purpose of carrying out the mining operations. To sum up, we, are, of the opinion that considering the clear wording of clause (i) of section 4 of the Extension Act and the statement of objects and reasons, it becomes very clear that the Legislature intended to have either of the entities to be consulted. And that the provisions of section 132 - A requiring consideration only with the Taluka Panchayat in no way cause prejudice at village Panchayat level. We, therefore, do not accept the first contention of learned counsel for the petitioners.

6. We may now deal with the contention raised by the learned counsel for the petitioners on the aspect of consultation required to be made before initiating land acquisition proceedings in Scheduled Area. According to him, in this case consultation with gram sabha is not only mandatory but such consultation has to be meaningful and gram sabha has to be informed that it has got a right to be consulted. We may first turn to the decisions which have been cited by the learned counsel for the petitioners on the question of what is the meaning of "consultation".

The Apex Court in the case rendered in *R. Pusham v. State of Madras* reported in AIR 1953 Madras p. 392 has in head note (a) stated as under :-

"Consult" implies a conference of two or more persons or the impact of two or more minds brought about in respect of a topic with a view to evolve a correct or at least a satisfactory solution. It must be directed to the essential points of the subject under discussion and enable the consultor to consider the pros and cons before coming to a decision. The consultation may be between an uninformed person and an expert or between two experts."

The Apex Court in its decision rendered in the case of *Union of India v. Sankalchand Himatlal Sheth* reported in (1977) 4 S.C.C. p. 193 has quoted with approval the Madras High Court's judgment by stating as under :-

"... While setting aside the reservation made in respect of one of the wards on the ground that the Local Government had failed to discharge its statutory obligation of consulting the Municipal Council, Justice K. Subba Rao, who then adorned the Bench of the Madras High Court, observed :

"The word 'consult' implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution". In order that the two minds may be able to confer and produce a mutual impact, it is essential that each must have for its consideration full and identical facts, which can at once constitute both the source and foundation of the final decision."

The Apex Court in para. 11 of its decision rendered in the case of The Municipal Corporation of Greater Bombay v. M/s. New Standard Engineering Co. Ltd. reported in AIR 1991 S.C. 1362 has observed as under :-

"11. In absence of the legislation making it plain what the consequence of failure to observe the statutory requirement, the Court must determine the question. It is a question of construction to be settled by looking at the scope and purpose of the enactment and by examining the relation of that provision to the object sought to be secured by such requirement. Particular regard may be had to its significance, whether it was intended to ascertain the views of individuals or corporate bodies and if so for what purpose. The practical effects of the exercise of power upon the rights of persons or authorities to be consulted are more relevant for consideration and they often determine the nature of the requirement. If the exercise of power is likely to impair the proprietary or financial interests of named bodies to be consulted, then generally the provision requiring consultation before the statutory power is exercised is construed as mandatory (See De Smith's 4th Edition, Pp.144-45)."

6.1. So far gram sabha is concerned, we have already expressed our opinion that consultation referred to in clause (i) of section 4 of the Extension Act is not necessary. However, we may ascertain from the record of this petition whether in the instant case consultation as required under sec. 132-A of the Act with the Taluka Panchayat has been made by the acquiring authority before acquisition of lands in question in accordance with the principles laid down by the Apex Court and the Madras High Court in aforesaid decisions. The affidavit-in-reply filed by respondent no. 2 clearly

shows that the Jhagadia Taluka Panchayat was consulted in the meeting that took place on 12th January, 2001. In that meeting the Collector, Bharuch, Special Land Acquisition Officer, General Manager and Assistant Manager (P & A) of respondent no. 2 and about 14 leaders of the farmers of the area had remained present apart from the members of the Taluka Panchayat. Respondent no. 2 has placed on record copy of the resolution passed in that meeting. It shows, pursuant to publication u/S. 4 of the L.A. Act, objections were invited by displaying a public notice and the land owners had raised certain demand which was placed before the concerned officers of Government and respondent no. 2. The demands pertained to payment of adequate compensation, providing employment in the project and to have similar such benefits. These aspects were negotiated between the parties. Thereafter a joint meeting of the leaders of farmers and the officials of the Government and respondent no. 2 was held under the Chairmanship of the Collector in his chamber, wherein after lengthy discussion on the relevant subjects and in particular determination of the amount of compensation, it was decided that compensation of Rs.3,55,000/- per hectare be awarded considering the fact that giving of employment was not possible and also to meet the requirements under the L.A. Act with regard to payment of solatium, interest, market price, etc. In case of standing crop in the field additional amount was also agreed to be paid. In the meeting of the Taluka

Panchayat the aspect of compensation was discussed and the amount indicated above was stated to be acceptable to all land owners present in the meeting. It was also agreed that after acquisition of land on aforesaid terms no one should approach the Court of law. This shows that in more than one occasion such consultation was held and the same has yielded fruitful results at both the ends. There is, therefore, no doubt that the consultation was meaningful and it was not an idle formality. The requirement of section 132-A is, therefore, adequately fulfilled by the respondents. In view of this, we hold that the consultation that has to be made with Taluka Panchayat of Jhagadia is as per the requirement of section 132-A of the Act and in accordance with the principles enunciated in the decisions stated above.

7. We may now consider the contention of the learned counsel for the petitioners to the effect that no alienation or transfer of the land of the members belonging to the scheduled tribes can be made, he has

placed heavy reliance on Samatha's case (supra) and in particular the passages nos. 12, 13, 14, 47 and 72, out of which no. 12 requires full reproduction here.

Plight of the Tribes

"12. Detailed study in this behalf and of their exploitation has been conducted by sociologists and anthropologists, the foremost notable of them being Prof. C.V.F. Haimendorf and Arher. Many others equally have evinced keen interest and investigated into living conditions of the tribes, their culture and customs, etc. which establishes that initially the tribals had held large tracts of lands as masters and had their own rich culture with economic status and cohesiveness as compact groups. The policy adopted by the rulers encouraged non-tribals to immigrate in large number and settle down in tribal areas. Governments compelled tribal chieftains to permit non-tribals to take hold of revenue administration, which led to the slipping of lands from the hold of the tribes to the non-tribals. In the "Tribes of India - The Struggle for Survival", Prof. Haimendorf has graphically explained diverse methods by which the tribals were deprived of their lands. Numerous methods to exploit them having become unbearable, they rebelled against their exploitation. Inderelli (Andhra Pradesh) police firing in which hundreds of innocent tribals were killed, is one of the latest events which would depict the enormity of their exploitation. By laying railway tracks and roads as means of communication by the British rulers, the tribal areas became accessible to the non-tribal immigrants who, with limited means, came in large numbers in search of livelihood and settled down in the Agency areas and acquired large holdings by exploitation of the tribals. Dr. P.V. Ramesh, IAS, Director, Tribal Welfare, in his article "Land Reforms and Land Transfer in Scheduled Area" in a seminar organised by A.P. Judicial Academy and published by it as "Scheduled Tribal and Social Justice" p. 178 at p. 202 has stated that in Utnoor Division of Adilabad District a tribal in whose name, 148 acres was recorded as owner, was declared as surplus landholder under the Land Reforms Act and the only 5 acres of land in his actual possession and enjoyment was taken by the Government as surplus land. In contract, Izaradars surrendered government land as they entered their names in

revenue records as owners and claimed compensation under the Land Acquisition Act for 742 acres."

Para. 13 is also on the same line and it describes the various methods employed by the non-tribals to exploit the tribals to the fullest extent and how they have fallen prey to the greed of non-tribals. Para. 14 contains details regarding previous legislations which were introduced with a view to prevent such exploitation of the tribals and to put brakes on the land grabbing activity carried on by the non-tribals by resorting to unethical and unscrupulous means and methods.

8. Mr. Venkataramani has further drawn our attention to the A.P. Scheduled Area Land Transfer Regulation (1 of 1959) and to para. 40 of this judgment. Section 3 (1) reads as under :-

"3. Transfer of immovable property by a member of a Scheduled Tribe-

(1)(a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a Society. Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes."

He has further contended that the prohibition imposed on transfer of immovable property of a member of scheduled tribe is absolute unless such transfer is made in favour of person who is a member of scheduled tribe or a society solely comprising members of scheduled tribe. Thus, according to him, transfer of land in favour of person other than a member of scheduled tribe is null and void and the word 'person' occurring in this section includes even the State Government, State Corporation or State Instrumentality. He has submitted that in view of this, the transfer of land in question in favour of respondent no. 2 for mining purpose by respondent no. 1 is null and void.

8.1. It is difficult to accept this contention of Mr. Venkataramani firstly because so far respondent no. 2 is concerned, undisputedly it is an instrumentality of the State Government. The lands in question have already been acquired by respondent no. 1 and they are now being

put in the possession of respondent no. 2 for mining purposes for excavating lignite for a public purpose viz. to supply it to the industries of South Gujarat. According to the Apex Court, this is not a transfer in the eye of law but merely an entrustment of its property for public purpose. In para. 117 in this very judgment it has observed as under :-

"117. It is seen that in one case, the transfer was claimed to have been made in favour of the State instrumentalities i.e. A.P.S.M.D. Corporation Ltd. It has already been held that transfer of the Government land in favour of its instrumentalities, in the eye of law, is not a transfer but one of entrustment of its property for public purpose. Since, admittedly, a public Corporation acts in public interest and not for private gain, such transfer stands excluded from the prohibition under para. 5(2)(b) of the Fifth Schedule and Section 3(1)(a) of the Regulation. Such transfer or lease, therefore, stands upheld. But a transfer of mining leases to non-tribal natural person or company, corporation aggregate or partnership firm, etc. is unconstitutional, void and inoperative."

Even earlier in this judgment i.e. para. 115 the Apex Court has said :-

"115. The Government stands prohibited to transfer the mining leases to Corporation aggregate etc. except to its instrumentality."

Secondly because so far the Andhra Pradesh legislation is concerned, the ban imposed on transfer of immovable property belonging to a member of scheduled tribe to person other than a member of a scheduled tribe is absolute; whereas there is no such absolute ban in the legislation applicable to the State of Gujarat. Not only that but the aforesaid provisions of A.P. enactment were in consideration of Apex Court in the case of Balco Employees' Union (Regn.) v/s. Union of India reported in (2002) 2 S.C.C. p. 333 and in paras. 70 and 71 it has observed as under :-

"70. While interpreting the said Regulation framed by the Governor in exercise of powers under Article 244 read with para 5 (2) of the Fifth Schedule of the Constitution, this Court held that the words "transfer of immovable property..... by as person" in that clause included the transfer by way of grant of mining lease by the State Government, Section 3 (1) was

interpreted as prohibiting any such transfer in favour of a non-scheduled tribe and it was further declared that such transfer shall be absolutely null and void.

71. While we have strong reservations with regard to the correctness of the majority decision in Samatha case, which has not only interpreted the provisions of the aforesaid Section 3 (1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh. Article 145 (3) of the Constitution provides that any substantial question of law as to the interpretation of the provisions of the Constitution can only be decided by a Bench of Five Judges. In Samatha case, it is a Bench of three Hon'ble Judges who by majority of 2:1, interpreted the Fifth Schedule of the Constitution. However, what is important to note here is, as already observed hereinabove, that the provisions of the Madhya Pradesh Land Revenue Code 1959 and Section 165, in particular, are not in pari materia with the aforesaid Section 3 of the Andhra Pradesh Regulation."

The Apex Court has thereafter pointed out the difference between the A.P. enactment and M.P. Revenue Code and has held that there is no absolute ban on the transfer of immovable property of a member of a scheduled tribe in the M.P. legislation and that decision rendered by the Apex Court in the case of Samatha (supra) was not applicable to the facts of Balco's case. Similarly the provisions of Bombay Land Revenue Code i.e. provisions of section 73 AA do not envisage a complete ban on such transfer of immovable property and such transfer is permissible with the permission of the Collector and now the District Panchayat for Scheduled Area. Therefore, the decision rendered by the Apex Court in samatha's case (supra) will not be of any help to the petitioners. The aforesaid contention of the petitioners, therefore, cannot be upheld.

9. This brings us to the last contention of the learned counsel for the petitioners that no measures have been taken to rehabilitate the persons deprived of their livelihood. However, this does not appear to be

factually correct. The affidavit-in-rejoinder filed by the respondent no. 2 states about the meeting which took place on 10th January, 2001 wherein several Government Officers and the leaders of the farmers were present. The compensation that has been worked out as payable to the land owners is to the extent of Rs.3,55,000/- per hectare, which we are informed by respondent no. 2's counsel, is much higher than the market price prevailing in that area and the statement is not denied by counsels for petitioners. The resolution that has been passed in the meeting clearly shows that this amount includes various items and one of them is that the compensation is already being paid for the deprivation of their livelihood. Thus, the affected persons are also being compensated for their loss of livelihood. The affidavit further shows that this industry is providing employment to many of the persons of village Amod and the surrounded villages. Even the land owners and their relatives are either erstwhile employees of respondent no. 2 or are still in service. The respondent no. 2 has taken care to see that not only the people get employment but they have been also provided with different facilities such as construction of road, installation of lights, facility for providing water by means of tankers, etc. In view of this, it cannot be said that the respondents are failed to take any measures in the direction of rehabilitation of the affected land owners.

10. Mr. Patel, learned counsel for the respondent no. 2 has contended that the petition is filed at a belated stage and, therefore, the reliefs prayed for therein cannot be granted since the acquisition proceedings are over and the award u/S. 11 of the L.A. Act has already been made. From the record of the petition it clearly appears that the entire procedure of acquisition envisaged under the L.A. Act has been complete and even the award is made u/S. 11 in February 2003. It also appears that almost 62% of the land owners have parted with the possession of their lands in favour of respondent no. 2. The operation of excavation of lignite has not commenced solely due to the fact that the petitioners' lands are situated in such a position that unless the said lands are put in possession of respondent no. 2, excavation is not possible. In view of this, despite the acquisition having been done of the lands in question, the respondent no. 2 is not able to procure the lignite and it has to incur heavy expenditure unnecessarily for engaging the staff at the site. Moreover, that causes delay in making the lignite available to the industries. It may be noted that so far the Gram Sabha is concerned, vide resolution dated

26/5/1999 it had shown its unwillingness to the acquisition of these lands. However, thereafter considerable period has lapsed, during which entire proceedings except making formal award u/S. 11 has been done. During this period no efforts has been made by the petitioners to approach the Court by filing petition under Article 226 of the Constitution. Thus, at such a belated stage the reliefs prayed for by the petitioners cannot be granted, particularly when the finality has been attached to the proceedings of acquisition. Mr. Patel has cited several decisions on this aspect. However, since we are in agreement with his submission on the facts, we do not propose to deal with those decisions. No decision controverting the proposition stated above has been cited on behalf of the petitioners. We, therefore, accept the contention of Mr. Patel in this behalf.

It may be pertinent to note here that the acquisition of petitioners' land and other lands of village Amod has been made to serve a public purpose, namely to obtain lignite which is used as cheaper substitute to industrial coal. From the affidavit-in-reply filed by the respondent no. 2 and also its sur-rejoinder, it becomes very clear that the lignite which is being excavated by respondent no. 2 is catering to the needs of industries in South Gujarat. By virtue of the paucity of lignite in the areas which have already been excavated by respondent no. 2, acute shortage of said mineral is being felt by the industries. Needless to say that that it have its resultant effect on the production of these industries. The need, therefore, has arisen to explore other areas where the lignite is available in adequate quantity. The area under acquisition seems to be rich so far that mineral is concerned. It is, therefore, in public interest that the same lands are required to be excavated and the lignite to be obtained as expeditiously as possible so that the industries may not suffer. This undoubtedly is in public interest and the activity which is proposed to be carried out by respondent no. 2 in this area is for public purpose and in public interest. In that view of the matter, personal interest of the people like the petitioners is bound to give way to the public interest.

11. In view of the above, we do not find any substance in this petition and it is hereby dismissed. Interim relief is vacated. No costs.

[AKSHAY H. MEHTA, J.]

At this stage Mr. Joy Methew, learned counsel for the petitioners requests that the status-quo granted earlier be continued for a further period of three weeks. Considering the fact that the lands have already been acquired for the excavation of the lignite and considering the fact that the respondent no. 2 is incurring heavy expenditure unnecessarily, this request cannot be accepted and it is rejected.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.